

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

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No. 38.

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ARKANSAS SOUTHERN RAILWAY COMPANY AND  
F. L. SHAW, SHERIFF AND TAX COLLECTOR, PLAINTIFFS  
IN ERROR,

*vs.*

LOUISIANA & ARKANSAS RAILWAY COMPANY,  
RESPONDENT.

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IN ERROR FROM THE SUPREME COURT OF LOUISIANA.

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## **SUPPLEMENTAL BRIEF FOR PLAINTIFFS IN ERROR.**

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The strenuous effort made by respondent to show that the Supreme Court of the United States has no jurisdiction in this case impels us to add to the brief already filed. We have not thought, and can hardly yet believe, that the respondent's position on the question of jurisdiction is serious. The whole issue in the court below was based on the existence *vel non* of the Federal question whether article 230 of the

constitution of Louisiana, adopted in 1898, impaired the obligation of the contract asserted by plaintiff in error and whether said contract was protected by the constitutional provision against the passage of any law by any State which impaired the obligation of said contract.

Totally unlike the cases cited in respondent's brief, in this case the Federal question was distinctly pleaded in the answer filed by plaintiff in error in the court of the first instance. It was not only pleaded and argued in that court, but it was passed upon by the district judge, his honor Judge George Wear, who held that article 230 of the Constitution of 1898, which was adopted subsequent to the voting of the tax in favor of the Arkansas Southern Railroad, did impair that contract and was unconstitutional, null, and void for that reason. In the Supreme Court of Louisiana the question was raised and argued orally and by briefs of both parties and was expressly and distinctly passed upon by the Supreme Court of Louisiana. The Federal question was recognized by the Supreme Court of Louisiana, but it decided that question adversely to plaintiff in error, holding that the article 230 of the Louisiana constitution, exempting new railroads from all taxation, did not impair the obligation of a contract for the reason that it held there was no contractual relation between the Arkansas Southern Railroad Company and the taxpayers of Winn parish prior to the adoption of the constitution of 1898. The Louisiana Supreme Court not only passed on this question—the organ of the court admitted that the court found difficulty in deciding the Federal question involved in the case. The cases decided and relied on by the respondent to show that there is no jurisdiction in this case in the Supreme Court are cases

where the Federal question was not raised or presented in the pleadings until too late, as was held in the case of the Kansas City Power Company *vs.* Julian, 215 U. S., 589, or cases where the judgment of the lower court rested entirely on non-Federal ground, as in the cases of Cincinnati Street Railway Company *vs.* Snell, 193 U. S., 30; Hammond Packing Company *vs.* Arkansas, 212 U. S., 322; Leathe *vs.* Thomas, 207 U. S., 72. All those cases are predicated upon the fact that no constitutional question was involved which it was necessary to pass on before a judgment could be rendered in the case. It is difficult to conceive how such authorities can apply to the question of jurisdiction in this case. A great deal of stress is laid on the case of the Arkansas Southern Railroad Company *vs.* German National Bank, 207 U. S., 270, in which the Federal question first appeared in the opinion of the Supreme Court of Arkansas. That decision went off entirely on questions of fact which the Arkansas Supreme Court held to be indisputable and categorically stated, basing their conclusion entirely on the rules of common law. The plaintiff in error in that case claimed no fundamental right within the protection of the Federal Constitution, as it does in this case. In *Chambers vs. Baltimore & Ohio R. R. Company*, 207 U. S., 142, the court held that where the opinion of the highest court of the State holds that a Federal question is at issue and decides that question adversely to the party who claims its protection, and the decision of such issue was essential to the judgment rendered, the Supreme Court of the United States is not concluded by the judgment of State court and must determine for itself whether a Federal question is really involved. Even where the constitutional question is first distinctly presented on motion for rehearing, the Supreme Court took jurisdiction.

Sullivan *vs.* Texas, 207 U. S., 416. In the last case cited (207 U. S., 423) the court says:

"This court determines for itself *whether or not a contract existed* and whether an act of the legislature of a State amounts to a contract within the impairment of obligation clause of the Federal Constitution. *Muhlker vs. Harlam Co.*, 197 U. S., 571; *Kies vs. Lowery*, 199 U. S., 239; *St. Paul Gaslight Co. vs. St. Paul*, 181 U. S., 147, and *Jefferson Branch Bank*, 1 Black, 436; *McCullough vs. Virginia*, 172 U. S., 102."

As we have stated in our original brief, the serious error committed by the Supreme Court of Louisiana consisted in holding that there was no contract existing between the Arkansas Southern Railroad Company and the police jury of Winn parish, representing the taxpayers thereof. We cannot too strongly urge the importance in this connection of the opinion of Judge Nicholls, speaking for the Supreme Court of Louisiana, in the case of *James et al. vs. Arkansas Southern R. R. Co. et al.*, 110 La., 145. As previously stated that decision disposes of the contentions made by the Supreme Court of Louisiana in this case with reference to the contract made between the railroad company and the taxpayers. The direct issue was made in that case that the obligation that the taxpayers pay the tax was forfeited by the failure of the railroad company to construct the road to Winnfield within the time specified in the ordinance of the police jury. Judge Nicholls held that the tax was not invalidated and that the obligation of the contract was not affected by the extension of time for three months. He stated that the petition of the taxpayers did not specify a

time within which the road should be completed to Winnfield and that the law under which the election was held did not require or authorize the taxpayers to fix the time for the completion of the road, and that the fixing of the time was made by the police jury of its own motion, and that if the police jury had the authority to add to the stipulations of the law a condition that the road should be completed within a certain time, it could waive or modify that condition. Such a condition did not make the completion of the road within the time specified a condition precedent to the earning of the tax. Judge Nicholls then proceeds to hold that the contract between the taxpayers and the constructing road was made when the result of the election was ascertained and promulgated. That the voting of the tax was not a gratuity nor a bonus, but that it was an obligation, with ample cause and consideration, entered into and to be carried out by both sides. Here is a decision of the highest court of Louisiana construing act 35 of 1886 of the State of Louisiana and holding that it did create a contract between the parties thereto, that is, the taxpayers and the constructing road. In the face of such a decision how can respondent pretend that there was no contract?

If this court does not accept the construction given by the court of Louisiana of act 35 of 1886, under which the Winn parish special election was held, it may be necessary for the court to examine that act and construe it. This act prescribes the manner in which special elections shall be held in parishes, cities, and incorporated towns for the purpose of levying special taxes in aid of railway enterprises and providing for their enforcement and collection.

Section 1 provides for submitting the question of levying the tax to the taxpayers of the parish.

Section 2 provides that the petition of the taxpayers shall designate the percentage of the tax and the number of years it is to be levied, not exceeding ten.

Section 3. That the election shall be held in the same manner as provided by law for general elections and the result shall be announced and promulgated by the president of the police jury.

Section 4 provides: "That if a majority in number and in value of the property taxpayers of such parish, city, or incorporated town shall vote in favor of such levy of said special tax, then the police jury for and on behalf of such parish or the municipal authorities for and on behalf of such city or incorporated town, shall immediately pass an ordinance levying such tax and for such time as may have been specified in the petition and shall designate the year in which such taxes shall be first levied and collected."

Section 6 provides that this special tax shall be levied on all taxable property in the parish and the police jury shall have the same power to enforce and collect said special tax that may be conferred on them by law for the collection of other taxes—"which taxes from time to time, as same are collected, shall be paid to the railway company."

Section 7 authorizes the transfer and assignment of the right to the whole or any portion of said special taxes.

If this law can be construed to mean anything other than that the taxpayers enter into a contract with the constructing railroad, it would certainly be a violation of all the ordinary rules of construction. If the legislature did not provide by this act a method of binding the taxpayers of the parish, how could they have provided such method? If the petition provided for was legally signed, and if the election was legally held, and if the majority in number and value

of the taxpayers voted for the tax, what more was needed to establish an obligation on the part of the taxpayers to carry the result of that election into effect?

The Supreme Court of Louisiana fell into a similar error of confusing two entirely different things in the case of *Fisk vs. Jefferson Parish Police Jury*, 116 U. S., 133, where it held that the employment of an attorney was not a contract either in reference to his salary or as to his compensation by fees. In that case Mr. Justice Miller, speaking for the court, says:

"It seems to us that the Supreme Court confounded two very different things. \* \* \* But after the services have been rendered under a law, resolution, or ordinance which fixes the rate of compensation, there arises an implied contract to pay for these services at that rate. This contract is a completed contract. Its obligation is perfect and rests on the remedies which the law then gives for its enforcement. The vice of the argument of the Supreme Court of Louisiana is in limiting the protecting power of the constitutional provision against impairing the obligation of contract to express contracts, to specific agreement, and in rejecting that much larger class in which one party, having delivered property, paid money, rendered services, or suffered loss at the request or for the use of another, the law completes the contract by implying obligation on the part of the latter to make compensation."

In that case the constitution of Louisiana of 1879 declared that no parish or municipal tax for all purposes shall exceed 10 mills, and this court annulled that provision and

held that the plaintiff in error was entitled to enforce the obligation of his contract under the law as it stood at the time the contract was made. This court also held in that case that it is well settled that a provision in the State constitution cannot impair the obligations of the contract and will be annulled for that reason as well as a similar provision found in an ordinary statute of the State.

In a very recent case, *Louisiana ex rel. Hubert, receiver. vs. New Orleans*, 215 U. S., 170, the Supreme Court of the United States had occasion to pass upon another decision of the Supreme Court of Louisiana in which that court again held that there was no contractual relations between the parties. That case arose from a petition for mandamus and the provision of the Federal Constitution against State legislation impairing the obligation of a contract was thoroughly examined and reviewed. Not merely the language of the Louisiana decision was considered but also its substance and effect. The reasoning of Mr. Justice Day in that case and the citations made by him are so apposite and so cogent in their application to the pending case that we need not apologize for quoting them at some length:

"A number of decisions of this court have settled the law to be that where a municipal corporation is authorized to contract and to exercise the power of local taxation to meet its contractual engagements, this power must continue until the contracts are satisfied and that it is an impairment of an obligation of the contract to destroy or lessen the means by which it can be enforced. In the case of *Wolff vs. New Orleans*, 103 U. S., 358, the subject was given full consideration and the doctrine thus summarized by Mr. Justice Fields, speaking for the court: 'It is true

that the power of taxation belongs exclusively to the legislative department and that the legislature may at any time restrict or revoke, at its pleasure, any of the powers of the municipal corporation, including, among others, that of taxation, subject, however, to this qualification, which attends all State legislation, that its action in that respect shall not conflict with the prohibition of the Constitution of the United States and, among other things, shall not operate directly on the contracts of the corporation, so as to impair their obligation by abrogating or lessening the means of their enforcement. Legislation producing this latter result, not indirectly as a consequence of legitimate measures, as will sometimes happen, but directly by operating upon these means, is prohibited by the Constitution, and must be disregarded—treated as never enacted—by all courts recognizing the Constitution as the paramount law of the land. This doctrine has been repeatedly asserted by this court when attempts have been made to limit the power of taxation of a municipal body, upon the faith of which contracts have been made and by means of which alone they could be performed. The prohibition of the Constitution against the passage of laws impairing the obligation of contracts applies to the contracts of the State and to those of its agents acting under its authority, as well as to contracts between individuals. And that obligation is impaired, in the sense of the Constitution, when the means by which a contract could be enforced at the time of its execution or rendered less efficacious by legislation operating directly upon those means.”

To the same effect is cited the opinion of Mr. Chief Justice Waite in the case of *Ralls County Court vs. United States*, 105 U. S., 733, all of which applies with signal force to the

case now under consideration and supports our theory and conclusion that plaintiff in error is entitled to the benefit of all the laws existing at the time its tax was voted. Mr. Justice Day well says in the opinion cited:

"The power of taxation conferred by law entered into the obligation of the contract and any subsequent legislation withdrawing or lessening such power, leaving the creditors without adequate means of satisfaction, impairs their obligation within the meaning of the Constitution."

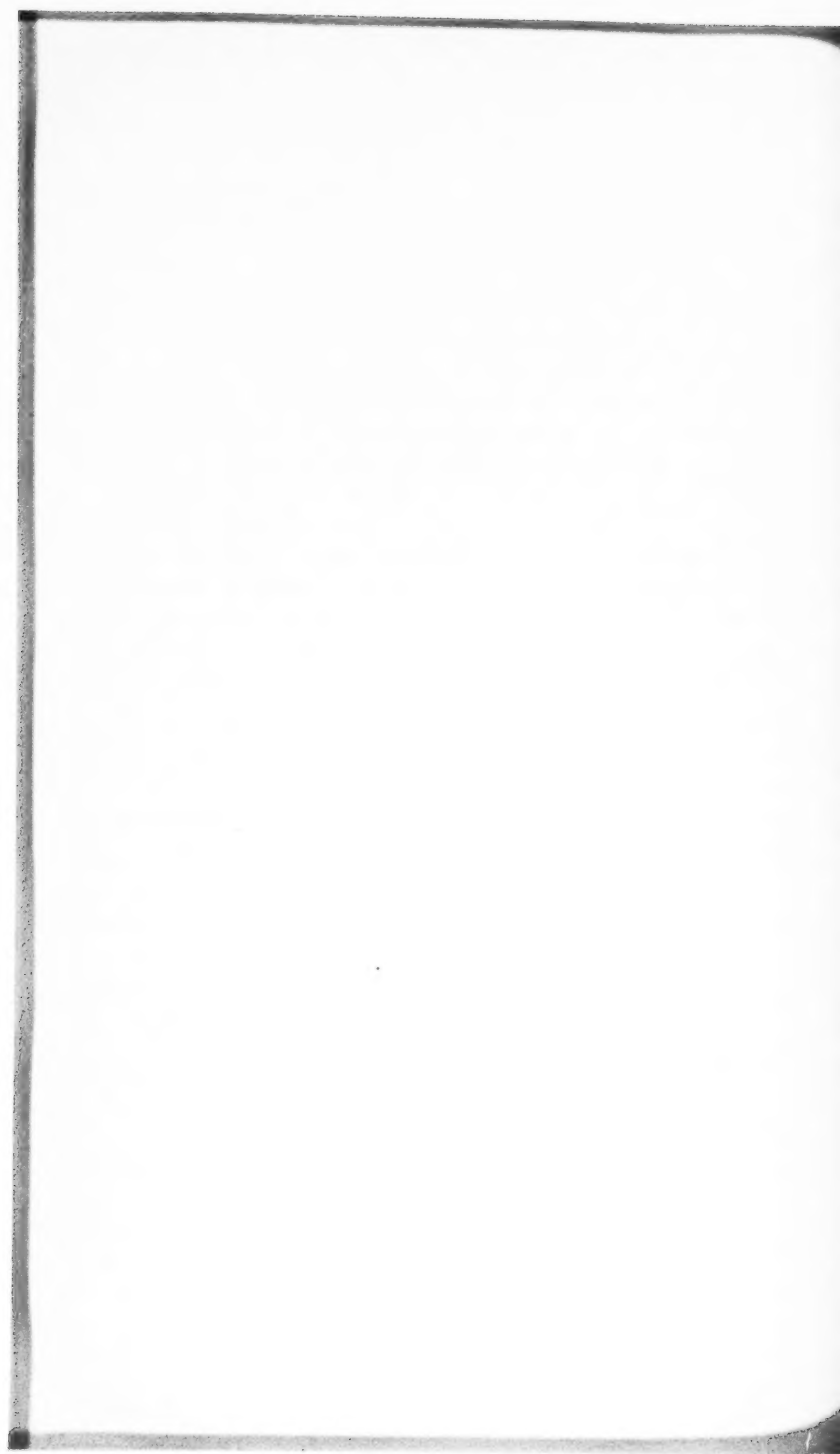
These recent enunciations are but a reaffirmance in terse and impressive language of the firm principles established long ago by the immortal Marshall and his illustrious associates. If the rights of the plaintiff in error be tested on the principles of the Louisiana Civil Code, or on the well-settled jurisprudence of that State, or on the jurisprudence and Constitution of the United States, they are bound to prevail against the ingenious, but untenable, suggestions of the respondent that no obligation flowed from the agreement of the taxpayers of Winn to furnish an adequate consideration to induce and compensate the building of the first railroad into their parish. None of the taxpayers are making any complaint except the new railroads, which are enjoying the fruit of the contract made between said taxpayers and the plaintiff in error.

Respectfully submitted,

A. A. GUNBY,

*Attorney for Arkansas Southern R. R. Co.*





Office Supreme Court, U. S.

**FILED.**

**OCT 29 1910**

**JAMES H. McKENNEY,**

**CLERK.**

**IN THE**  
**Supreme Court of the United States**

**OCTOBER TERM 1909.**

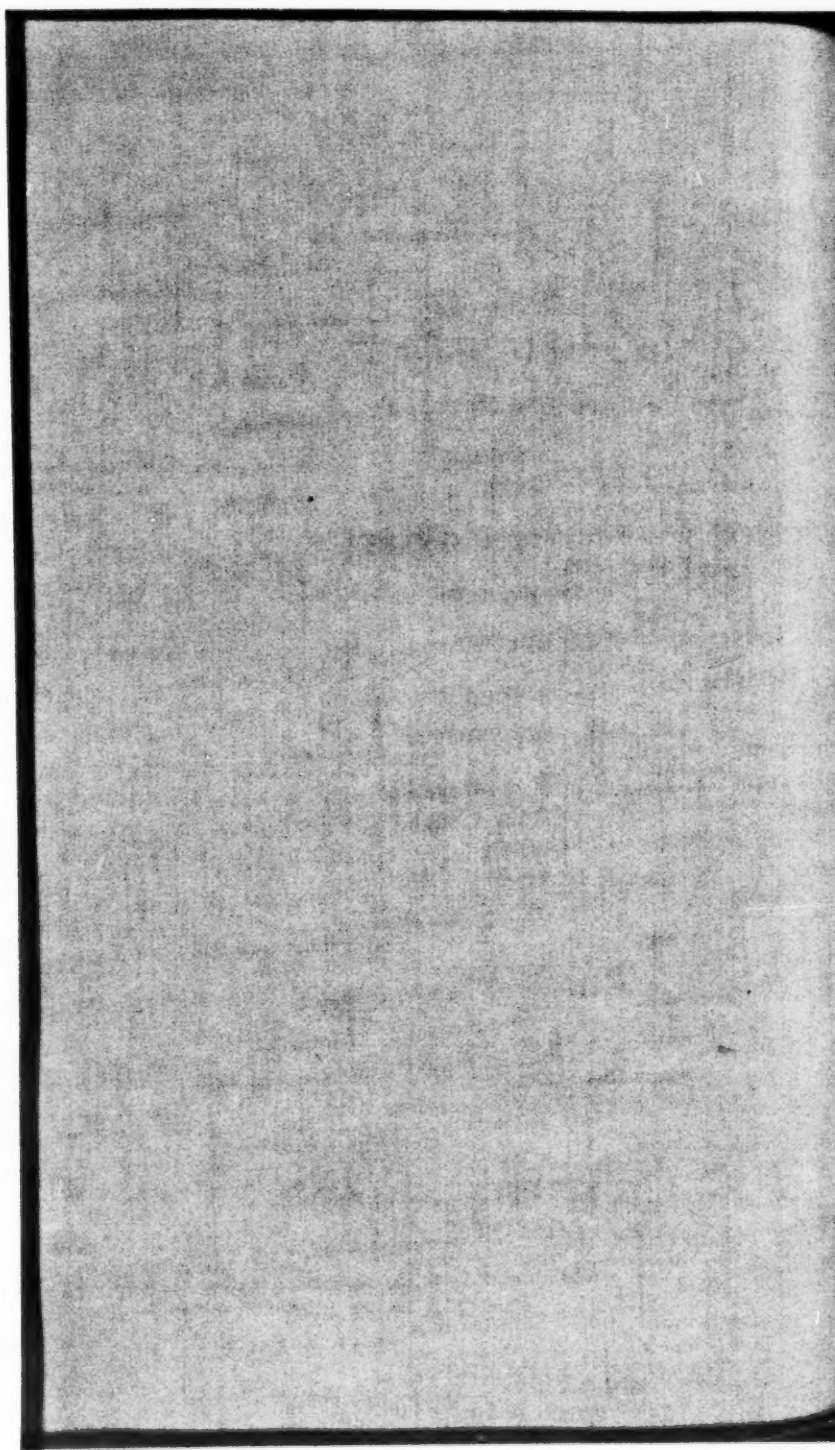
**No. 138.**

**ARKANSAS SOUTHERN RAILWAY COM-  
PANY AND F. L. SHAW, Sheriff and Tax  
Collector, .....Plaintiffs in Error,**  
**versus**  
**LOUISIANA & ARKANSAS RAILWAY  
COMPANY, .....Respondent.**

**In Error from the Supreme Court of Louisiana.**

**BRIEF AND ARGUMENT OF RESPONDENT.**

**HENRY MOORE,**  
**H. H. WHITE,**  
**HENRY MOORE, Jr.,**  
**Attorneys for Respondent in Error.**



**IN THE**  
**Supreme Court of the United States**

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**OCTOBER TERM 1909.**

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**No. 211.**

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**ARKANSAS SOUTHERN RAILWAY COM-  
PANY AND F. L. SHAW, Sheriff and Tax  
Collector, .....Plaintiffs in Error,  
versus**

**LOUISIANA & ARKANSAS RAILWAY  
COMPANY, .....Respondent.**

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**In Error from the Supreme Court of Louisiana.**

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**BRIEF AND ARGUMENT OF RESPONDENT.**

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As set forth in brief of Plaintiffs in Error, the Louisiana & Arkansas Railway Company enjoined the attempted collection of a special five mill tax levied in favor of the Arkansas Southern Railroad Company for the years 1903, 1904, 1905 and 1906 against 26.55 miles of main track and 2.62 miles of side track belong-

ing to said Louisiana & Arkansas Railway Company, which had been commenced, built and constructed through Winn Parish, Louisiana, after the adoption of the Constitution of Louisiana for the year 1898 and prior to the 1st day of January, 1904, which said main track and side track had been advertised to be sold for the payment of said tax—claiming said railroad to be exempt from the payment of such tax by virtue of the provisions of Art. 230 of said Constitution of 1898.

The Supreme Court of Louisiana sustained the contention of the Respondent and perpetuated the injunction granted by the lower court.

The Articles of the Constitution of the State of Louisiana of 1898, Nos. 224, 225, 230, 232 and 270 referred to by the Supreme Court of Louisiana in its opinion, will be copied herein for the convenient reference of this Honorable Court; copying from the Constitution of 1898 and giving the numbers of each corresponding article in the Constitution of 1879—omitting in such copying only such matters as are entirely irrelevant to the questions at issue.

Art. 224 (202 Const. 1879.) “The taxing power may be exercised by the General Assembly for state purposes, and by parishes and municipal corporations and public boards under authority granted to them by the General Assembly for parish, municipal and local purposes, strictly public in their nature.”

Art 225 (203 Const. 1879.) “Taxation shall be equal and uniform throughout the territorial limits of the authority levying the tax, and all property shall be taxed in proportion to its value to be ascertained as

directed by law; provided the assessment of all property shall never exceed the actual cash value thereof; and provided further, that the tax payers shall have the right of testing the correctness of their assessments before the courts of justice.

In order to arrive at this equality and uniformity, the General Assembly shall, at its first session after the adoption of this Constitution, provide a system of equality and uniformity in assessments based upon the relative value of property in the different portions of the state. The valuations put upon property for the purposes of state taxation shall be taken as the proper valuations for purposes of **local taxation** in every subdivision of the state."

"Art. 230 (207 Const. 1879). The following shall be **exempt from taxation**, and no other, viz: All public property, places of religious worship, or burial, all charitable institutions, all buildings and property used exclusively for public monuments of historical collections, colleges and other school purposes, the real and personal estate of any public library, and that of any other library association used by or connected with such library, all books and philosophical apparatus, and all paintings and statuary of any company or association kept in a public hall; provided, the property so exempted be not leased for purposes of private or corporate profit or income. There shall also be exempt from taxation household property to the value of five hundred dollars. There shall also be exempt from parochial and municipal taxation for a period of ten years from the first day of January, 1900, the capital, machinery and other property employed in mining operations, and in the manufacture of textile fabrics, yarns, rope, cordage, leather, shoes, harness, saddlery, hats, clothing, flour, machinery, articles of tin, copper and sheet iron, agricultural implements and furniture and other articles of wood, marble or stone, soap, stationery, ink and paper, boat building and fertilizers and chemicals; provided, that not less than five hands are employed in any one factory; provided, that nothing herein contained shall affect the exemptions provided for by existing constitutional provisions.

There shall also be **exempt from taxation** for a period of ten years from the date of its completion any railroad or part of such railroad that may hereafter be constructed and completed prior to January 1, 1904; provided, that when aid has heretofore been voted by any parish, ward, or municipality to any railroad not yet constructed, such railroad shall not be entitled to the exemption from taxation herein established, unless it waives and relinquishes such aid or consents to a re-submission of the question of granting such aid to a vote of the property taxpayers of the parish, ward, or municipality, which has voted the same, if one-third of such property taxpayers petition for the same within six months after the adoption of the Constitution."

(The provisions of this article establish many exemptions not mentioned in Const. 1879).

"Art. 232 (209 Const. 1879). The State tax on property for all purposes whatever, including expense of government schools, levees and interest, shall not exceed, in any one year, six mills on the dollar of its assessed valuation, and except as otherwise provided in this Constitution, no parish, municipal or public board tax for all purposes whatsoever, shall exceed in any one year ten mills on the dollar of valuation; provided, that for giving additional support to public schools, and for the purpose of erecting and constructing public buildings, public school houses, bridges, wharves, levees, sewerage work and other works of permanent public improvement, the title to which shall be in the public, any parish, municipal corporation, ward or school district may levy a special tax in excess of said limitation whenever the rate of such increase and the number of years it is to be levied and the purposes for which the tax is intended, shall have been submitted to a vote of the property tax payers of such parish, municipality, ward or school district entitled to vote under the election laws of the State, and a majority of the same in numbers and in value voting at such election shall have voted therefor."

Art. 270 (242 Const. 1879). "The General Assem-

bly shall have power to enact general laws authorizing the parochial, ward and municipal authorities of the State (In Const. of 1879 Art. 242 there here appears the words, "**under certain circumstances**," which words are omitted from Art. 270 of Const. of 1898) by a vote of the majority of the property tax payers in number entitled to vote under the provisions of this Constitution and in value, to levy **special taxes** in aid of public improvements or railway enterprises; provided, that such tax shall not exceed the rate of five mills per annum, nor extend for a longer period than ten years; and provided further, that no tax payer shall be permitted to vote at such election unless he shall have been assessed in the parish, ward or municipality to be affected for property the year previous."

Neither Article 232 (209 of Const. 1879), nor Art. 270 (242 of Const. 1879) are **self-operative** or **self-acting**. The powers contemplated by the provisions of these articles cannot be exercised by the Parish, Municipal or Public Board authorities without legislative sanction and warrant—and such powers are controlled and limited by the legislative grant authorizing same. The Supreme Court of Louisiana so held in *Surget vs. Chase, Tax Collector*, 33 Ann., p. 833. The language of both Articles is that, "The General Assembly shall have power to enact general laws, etc."

The requisite legislative sanction to carry into effect Art. 232 Const. 1898 was given by Act 131, 1898 (Sec. 5), amended by Act 145 of 1904 (Sec. 3), and reading as follows:

"Be it further enacted, etc., that the Police Jury of any Parish, ward or school district, or the municipal authorities of any municipality, shall, when the vote is in favor of the levy of such **special tax**, levy and col-

lect annually, in addition to **other taxes**, such special tax, at the rate voted by the property tax payers and during the years designated, **upon all the taxable property within the limits of such Parish, municipality, ward or school district**, as the case may be, and such Police Jury and authorities and the proper tax collectors shall have the same right to enforce and collect any **special tax** that may be authorized by such election, as is or may be conferred by law upon them for the collection of other taxes, which **special taxes** so collected shall be used for the object or purpose designated in the petition and for none other, and in case of a **special tax** voted for the support of a public school, or for the purpose of erecting a public school house, the same shall, from time to time, as collected be paid to the Board of School Directors of the Parish in which said **special tax** shall be levied."

The legislative sanction to carry into effect Art. 242 of Constitution of 1879 and under which the tax in question was voted is found in Act 35, 1886, p. 44, same being passed to "make effective Art. 242, Constitution 1879." It is upon this Act counsel for Plaintiffs in Error relies for his alleged contract, and upon page 12 of his brief we find Sec. 4 of said Act copied in full. We call especial attention to the wording of Art. 242 copied above, and to Section 6 of said Act which we shall copy in extenso. The language of said Art. 242 gives the legislature discretion as to how and when and on what property the special tax may be levied.

The General Assembly having this discretion limits the tax to "**the taxable property within said parish, etc.**" Sec. 6 of said Act as amended by Act 153, 1894, is as follows:

"Sec. 6. That the police jury of any parish or the municipal authorities of any city or incorporated town, shall, when the vote is in favor of the levy of such taxes, levy and collect annually, **in addition to other taxes, a tax upon all taxable property within such parish,** ward, city or incorporated town sufficient to pay the amount specified to be paid in such petition; and such police jury and municipal authorities shall have the same power to enforce and collect **any special tax** that may be authorized by such election, as is or may be conferred by law upon them for the collection of **other taxes;** which taxes so collected shall from time to time, as the same are collected, be paid to the railway company or corporation named in such petition, or to any person, partnership or other company or corporation to which the same may have been assigned."

Counsel for Plaintiffs in Error upon page 7 of his brief insists—that although the Writ of Error was taken upon the one alleged Federal question, to-wit: That the exemption from taxation provided for in Art. 230 of the Louisiana Constitution of 1898 invoked by Respondent and sustained by the Supreme Court of Louisiana, is in conflict with the Federal Constitution because it impairs the obligations of a contract;—yet this Court will go into all the issues passed upon by the Supreme Court of Louisiana. Practically, the only other issue passed upon and decided by said Supreme Court was to the effect that when a tax under the authority granted by the Legislature of Louisiana as provided for in Art. 270 Const. of 1898 (Art. 242 Const. 1879) was voted to be levied upon all the **taxable property** within the limits of Winn Parish, such tax could not be collected upon property which the sovereign State of Louisiana had declared was **not taxable.**

Counsel for Plaintiffs in Error started out claiming that the tax in question was a **local assessment**, and, notwithstanding the fact that he has had to abandon the claim that said tax was in the nature of a local assessment, and could only be classed as Local Taxation, he continues to quote in favor of his contention the case of *Illinois Central R. R. vs. Decatur*, 147 U. S., 190, and *Ford vs. Delta & Pine Lumber Co.*, 164 U. S., 662, notwithstanding the fact that the opinion of the Supreme Court of Louisiana plainly sets forth that these were cases of **special assessments levied upon property specially benefitted**.

He now complains upon page 9 of his brief that the Supreme Court of Louisiana fell into error in construing the exemption provided for in Art. 230 of the Constitution of 1898 to extend to **Local Taxation**, described by Justice Watkins in *Munson vs. Board of Commissioners*, 43 La. Ann., in contradistinction from a local assessment, as "a tax for the local purposes of a particular district of country imposed on the persons domiciled or property therein situated, as distinguished from other parts of the state"—which is the same character of taxation that this Honorable Court in *Illinois Central R. R. vs. Decatur*, *supra*, describes as a tax for "the promotion of those various schemes which have for their object the welfare of all."

The Supreme Court of Louisiana in its opinion upon these points followed a uniform line of decisions of its predecessors extending back for more than fifty years.

See, *City of LaFayette vs. Orphan Asylum*, 4 Ann.,

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*Rooney vs. Brown*, 21 Ann. 57.

*LeFrance vs. City of New Orleans*, 27 Ann. 188.

*Board of Levee Commissioners vs. Lorie Bros.*, 33 Ann. 276.

*Surget vs. Chase, Tax Coll.*, 33 Ann. 833.

*City of N. O. vs. Carondelet, etc.*, 36 Ann., 396.

*Charnock vs. Levee Comm'rs*, 38 Ann., 323-6.

*Planting Co. vs. Tax Collector*, 39 Ann. 455.

*Munson vs. Board of Comm'rs*, 43 Ann., 15, and pp. 26-30.

*Citizens & Taxpayers vs. Williams*, 49 Ann., 422.

*Fullilove vs. Police Jury*, 51 Ann., 359.

*M. K. & T. Trust Co. vs. Assessor*, 51 Ann., 416.

*R. R. Co. vs. State Board of Appraisers*, 52 Ann., 1931.

*Hughes vs. Board of Comm'rs*, 108 Ann., 146.

*Construction Co. vs. Tax Collector*, 108 Ann., 437.

*United Railway & Trading Co. vs. Meyers, Sheriff*, 112 Ann., 897.

*L. & N. W. K. Co. vs. State Board of Appraisers*, 120 La., 471.

And see also the very recent case of *L. R. & N. Co. vs. Madere, Sheriff*, Sou. Rept., Dec. 25, 1909, Vol. 50, p. 609.

We take it as too well settled to be seriously controverted, that the decision of the Court of last resort

of any state construing the statutes, or Constitution of such state, is binding upon this court, and we deem it improper to burden the court with a discussion of the various issues, outside of the alleged Federal question, that may have been passed upon by the Supreme Court of Louisiana and decided in favor of the defendant in error.

See Note "**b, Statutory Construction,**" Missouri, ex rel. Hill vs. Dockery, Sup. Court of U. S., 191 U. S., 165, p. 575, Book 63, Lawyers Repts. Annotated.

The learned counsel for plaintiffs in error in his assignment of errors, and in his argument in printed brief seems to take for granted as a fact that the Supreme Court of Louisiana in the decision of this case decided a question involving a construction of Sec. 10 Art. 1, of the Constitution of the United States and that such decision was necessary to sustain the opinion rendered by the said Court.

Special attention is called to said opinion on pp. 24 to 29, Transcript of Record, and we confidently assert that a careful perusal of same will convince this court that no question arising under the Constitution of the United States was necessarily involved in such decision and that the decision does not pass on any question involving the impairment of the obligation of contracts that would arise under Art. 1, Sec. 10 of the Constitution of the United States.

The plaintiffs in error in their pleadings and in their brief and argument before the court of last resort in Louisiana attempted to raise the question that a contract existed between the taxpayers of Winn Parish and the Arkansas Southern Railroad Co. and thereby tried to get before the court the question that under such contract the taxes levied against the Louisiana & Arkansas Railway Company had become vested in the Arkansas Southern Railroad Co. and contended that this contract would be impaired by a decision of the Supreme Court of Louisiana sustaining the injunction against the collection of such taxes.

The Louisiana Supreme Court did not find it necessary to decide this constitutional question, but found as a fact that the Arkansas Southern Railroad Co. had a tax voted it in Winn Parish in February of 1898; that on May 12th, 1898, the Constitution of the State of Louisiana for the year 1898 was adopted; that under Art. 230 of said Constitution of 1898, all railroads and parts of railroads built within the State after the adoption of said Constitution and prior to the first day of January, 1904, were exempt from taxation, except those to whom aid had been voted, and that roads desiring such exemption from taxes were required to file a waiver of the aid voted; and that the Arkansas Southern Railroad Co. instead of filing a waiver of the aid voted did on the 5th day of November, 1898, file its waiver of exemption from taxes.

The court further found as a fact that the Arkansas Southern Railroad Co. was not completed on or before the 7th day of February, 1901, in accordance with the terms of the tax voted, but by some "proceeding and judgment of the Police Jury of Winn Parish," which was not explained, said railroad was given an extension of time to the first day of May, 1901, thus deciding the question at issue squarely upon the fact that the contract (if any existed between said taxpayers and the defendant Railroad Company) did not come into existence until after the adoption of the Constitution of 1898, which Constitution contained the exemption from taxation claimed by the plaintiff railroad company—and under such finding of facts, the decision did not turn on the construction of any question arising under the Constitution or statutes of the United States, but on matters of fact as above found by the Louisiana Supreme Court. Below we quote two paragraphs from their decision, which, it seems to us, gives the true gist of this matter:

"When the Constitution was adopted in May, 1898, aid had been voted to the predecessors of the defendant railroad, on a certain condition. It appears from the statement of facts that this condition was not complied with, but in some way not explained, the railroad procured a modification of the contract as to the time of completion. It cannot, therefore, be said that the defendant railroad acquired all of its contract rights prior to the adoption of the Constitution of 1898."

"The right of the defendant railroad to a tax levy

did not become vested until the year 1901—three years after the adoption of the Constitution of 1898.” Page 28 of Transcript of Record.

The Supreme Court of the United States will not take jurisdiction and cannot review the judgment of a State court in the absence of a federal question.

Murdock vs. Memphis, 87 U. S. 590.

New Orleans Water Works Co. vs. Sugar Refining Co., 125 U. S. 18.

Davis vs. Texas, 139 U. S. 651.

Leathe vs. Thomas, 207 U. S. 93.

Arkansas Southern R. R. Co. vs. German Nat'l Bank, 207 U. S. 270.

Other citations almost without number could be made sustaining this proposition, but it is one so well settled, that it would be useless to present other authorities.

Even where a Federal question is raised by the pleadings and such question is decided by the Supreme Court of a State, this court has no jurisdiction to review such judgment, unless the opinion given by the State court as to the Federal question was necessary to sustain its decision.

In the case of New Orleans Water Works Co. vs. Louisiana Sugar Refining Co., *supra*, this matter was gone into very fully and the previous decisions of this court upon this point thoroughly reviewed and there the following rule was laid down which has since been

strictly adhered to by this court in deciding questions as to jurisdiction:

“The result of the authorities, applying to cases of contracts the settled rules, that in order to give this court jurisdiction of a writ of error to a state court, a federal question must have been, expressly or in effect, decided by that court, and therefore, that when the record shows that a federal question and another question were presented to that court and its decision turned on the other question only, this court has no jurisdiction, may be summed up as follows: When the state court decides against a right claimed under a contract, and there was no law subsequent to the contract, this court clearly has no jurisdiction. When the existence and the construction of a contract are undisputed, and the state court upholds a subsequent law, on the ground that it did not impair the obligation of the admitted contract, it is equally clear that this court has jurisdiction. When the state court holds that there was a contract conferring certain rights, and that a subsequent law did not impair those rights, this court has jurisdiction to consider the true construction of the supposed contract, and if it is of opinion that it did not confer the rights affirmed by the state court, and therefore its obligation was not impaired by the subsequent law, it may on that ground affirm the judgment. So, when the state court upholds the subsequent law, on the ground that the contract did not confer the right claimed, this court may inquire whether the supposed contract did give the right, because, if it did, the subsequent law cannot be upheld. But when the state court gives no effect to the subsequent law, but decides, on grounds independent of the law, that the right claimed was not conferred by the contract, the case stands just as if the subsequent law had not been passed, and this court has no jurisdiction.”

In *Dugger vs. Bocoek*, 14 Otto 596, referring to the question of jurisdiction, occurs the following paragraph:

“The rule in relation to our jurisdiction is that it must either appear from the record in express terms that there has been a decision against the right claimed under the Constitution, laws or treaties of the United States, or that the judgment or decree complained of could not have been given without so deciding.” Citing *Murray vs. Charleston*, 96 U. S. 442.

In *DeSaussure vs. Garland*, 127 U. S. 216, this court held:

“Where a state court bases its judgment, not on a law raising a federal question, but on an independent ground, this court will not take jurisdiction of the case, even though it might think the position of the state court an unsound one.”

In the above case occurs the following paragraph, which appears particularly pertinent in the instant case:

“And it has been repeatedly decided under Sec. 709 of the Revised Statutes that to give this court jurisdiction of a writ of error to state court, it must appear affirmatively, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.” Citing as authority *Brown vs. Atwell*, 92 U. S. 327. *Citizens Bank vs. Board of Liquidation*, 98 U. S. 140. *Adams Co. vs. Burlington & M. R. R. Co.*, 112 U. S. 123, and *Detroit City R. Co. vs. Guthard*, 114 U. S. 133.

In the *City and County of San Francisco vs. Itsell*, 133 U. S. 65, Mr. Justice Gray, citing the cases above referred to, again held that this court had no jurisdiction to review the judgment of the highest court of a

state, unless a federal question has been, either in express terms, or by necessary effect, decided by that court against the plaintiff in error.

In *Wood Mowing Machine Co. vs. Skinner*, 139 U. S. 293, this court held:

“It does not appear upon what ground the Court of Appeals proceeded in affirming this judgment, but as the case might have been properly determined upon ground broad enough to support the judgment without resort to a federal question, this court has no jurisdiction.”

Citing as supporting such opinion *Baupre vs. Noise*, 138 U. S. 397, and *Johnson vs. Risk*, 137 U. S. 300.

In *Johnson vs. Risk*, this court held:

“The plaintiff in error, if he wished to claim that this cause was disposed of by the decision of a federal question, should have obtained the certificate of the Supreme Court to that effect, or the assertion in the judgment that such was the fact.”

In *Hammond vs. Johnson*, 142 U. S., p. 73, this court held:

“It is well settled that where the Supreme Court of a state decides a federal question in rendering a judgment, and also decides against the plaintiff in error upon an independent ground not involving a federal question and broad enough to maintain the judgment, the writ of error will be dismissed without considering the federal question.”

*The City of New Orleans vs. New Orleans Water Works Co.*, 142 U. S. 79, and *Delaware, etc., Nav. Co. vs. Ribald*, 142 U. S. 636, support fully the last quoted citation.

In the State of Connecticut vs. Woodruff, 153 U. S. 689, without giving an opinion, the Chief Justice sustained a motion to dismiss where the record showed that the case was decided in the state court on grounds broad enough in themselves to support the judgment without reference to the federal question, citing a number of cases mentioned above.

“The erroneous decision of a federal question by a state court will not give jurisdiction to the Supreme Court of the United States if questions of fact adequate to determine the controversy and broad enough to maintain the judgment independent of any federal question were decided.” Eagan vs. Hart, 165 U. S. 188.

Rector vs. Ashley, 73 U. S. 142.

Klinger vs. Missouri, 80 U. S. 257.

Steins vs. Franklin Co., 81 U. S. 15.

The holding of this court has always been consistent with the cases hertofore cited yet this question was raised again in several cases decided during the October term 1907, when the court again adhered to its former ruling and dismissed for want of jurisdiction, the writs of error where the record showed a complete and adequate ground for the decision rendered other than the federal question raised, and the court refused to inquire into the fact whether the decision upon such ground was or was not correct, and thus refused to take jurisdiction to investigate the federal question attempted to be brought before it. Leathe vs. Thomas, 207 U. S. 93.

In *Arkansas Southern R. R. Co. vs. German National Bank*, 207 U. S. 270, this court held as follows:

“When we see that the opinion of the court upon the constitutional question first appearing in that opinion was not necessary to its judgment upon the case, we have nothing more to do.”

See also *Vandalia R. R. Co. vs. State of Indiana, ex rel., City of South Bend*, 207 U. S. 359. *Stickney vs. Kelsey*, 209 U. S. 419. In this last case where it appeared from the opinion that the language of the state court might be interpreted as a declination to pass upon a federal question not necessary to the decision, the Supreme Court of the United States, since the action of the state court was ambiguous, declared it would resolve the ambiguity against the parties complaining who were bound to show clearly that a federal right was impaired, and held it would not use its ingenuity in trying to find a federal question in order that it might take jurisdiction.

In cases involving the legality of any tax, toll or impost, the Supreme Court of Louisiana under Article 81 of the Constitution of 1879 and under Article 85 of the Constitution adopted May 12, 1898, is given appellate jurisdiction of both the law and facts. The finding of facts of the Supreme Court of Louisiana is final and will not be reviewed by this court. *Quinby vs. Boyd*, 128 U. S. 488. *Cornell University vs. Fiske*, 136 U. S. 152. *Dower vs. Richards*, 151 U. S. 658.

In *Sanford vs. Sanford*, 139 U. S. 642, a cause ap-

pealed from the Oregon Supreme Court, in which state, just as in the State of Louisiana, the findings of fact in equity cases of said court are as conclusive as similar findings in a case at law, this court, speaking through Field, Justice, held:

“They (findings of fact) must, therefore, be taken as correct in the disposition of the question before us, they not having been set aside or qualified by any subsequent action of the court below.”

The Supreme Court of Louisiana found as a fact the following:

“The right of the defendant railroad to a tax levy did not become vested until the year 1901, three years after the adoption of the Constitution of 1898.” Transcript of Record, p. 28.

The exemption from taxation of the respondent, Louisiana & Arkansas Railway Company, is claimed under the Constitution of 1898 adopted three years prior to the date the Supreme Court of Louisiana found the tax levy of the plaintiff in error became vested, and no law or statute of Louisiana passed subsequent to 1898 is brought into this record or involved in this decision.

This court has held “When the state court decided against a right claimed under a contract, and there was no law subsequent to the contract, this court clearly has no jurisdiction.” *New Orleans Water Works Co. vs. Louisiana Sugar Refining Co.*, supra, 125 U. S. 18.

In *Lehigh Water Co. vs. Corporation of the Borough of Easton, et al*, 121 U. S. 388, in referring to that

section of the Constitution that no state shall pass any law impairing the obligation of contracts, the court held:

“Obviously, this cause cannot be invoked for the reversal of the judgment below. It is equally clear that the law of the state to which the Constitution refers in this clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired.”

In the same case, this court further held as follows:

“The argument in behalf of the company seems to rest upon the general idea that this court, under the statutes defining its appellate jurisdiction, may re-examine the judgment of the state court in every case involving the enforcement of contracts. But this view is unsound. The state court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it; it may hold a contract void which in our opinion is valid; it may adjudge a contract to be valid which in our opinion is void, or its interpretation of the contract may in our opinion be radically wrong; but in neither of such cases would the judgment be reviewable by this court under the clause of the constitution protecting the obligation of contracts against impairment by state legislation, and under the existing statutes defining and regulating its jurisdiction, unless that judgment, in terms or by its necessary operation, gives effect to some provision of the State Constitution, or some legislative enactment of the State, which is claimed by the unsuccessful party to impair the obligation of the particular contract in question.”

We contend before this court can assume jurisdiction, the decision of the state court must show squarely that a question arising under the Constitution or statutes of the United States was involved and that the

decision of the state court could not have been made without deciding the federal question thus raised, and we claim that a careful perusal of the opinion of the Supreme Court of Louisiana delivered in this cause shows clearly that it was not necessary to decide the federal question raised by the pleadings, and that said court did not attempt to decide such federal question; and therefore, this court is without jurisdiction to review the case and the writ of error must be dismissed.

Even if it should be granted that the Plaintiff in Error—the Arkansas Southern Ry. Co.—accepted the offer of the tax payers of Winn Parish according to its terms, and if it had earned said tax by the completion of its road on or by Feb. 7, 1901, so that it might be held that a binding contract between said parties had been entered into on the day the tax was promulgated, Feb. 7, 1898, yet, according to the very terms of said contract, the property of the respondent railroad would not be subject to said tax and the Supreme Court of Louisiana so held.

Under Sec. 6 of Art. 35 of 1886 of the State of Louisiana, under which the tax to said Plaintiff in Error was voted, such tax could be levied only upon **all taxable property within the Parish**. There was no property of the respondent railroad in Winn Parish at that time, and all property now belonging to it within the Parish has been brought into existence since the year 1901. Said respondent railroad accepted the offer

under the exemption clause of Art. 230 of the Constitution of 1898, and as expressed by the Supreme Court of Louisiana in its opinion in this case "the plaintiff railroad came into existence under shelter of the constitutional exemption and is not and never has been taxable property in the Parish of Winn."

The decisions of the State of Louisiana have been liberal in construing and interpreting exemption clauses under the Constitution and statutes of said state. In *LeFranc vs. City of New Orleans*, 27 Ann. 188, the court uses the following language:

"We think an exemption from taxation of property used for certain purposes expressly granted in the Constitution or in a law specially authorized by the Constitution means an exemption from all taxations, municipal as well as State; that when the people, speaking through the Constitutional Convention and through the legislature, declare that all property actually used for church, school or charitable purposes shall be exempt from taxation, they mean a complete, not a partial, exemption from the burden of taxation; also that this limitation shall apply to the power of taxation previously delegated to the municipal corporations of the state. Therefore, we conclude that the school house of the plaintiffs was not liable to the taxes of 1869 assessed by the City of New Orleans."

In *City of New Orleans vs. Carondelet Canal Co.*, 36 Ann. 396, Chief Justice Bermudez in delivering the opinion of the court says:

"The exemption is unlimited, unqualified. It therefore extends to all taxation, whether State or municipal. The reason for which the exemption was accorded by the State, is equally strong in favor of a similar exemption from municipal taxation. When the sovereign emancipates, he does so munificently."

The language of the Legislature referred to by C.

J. Bermudez reads as follows: "That said canal and railroad shall be exempt from taxation during the period of fifty years."

To bring the respondent into the Parish of Winn under the exemption clause hereinbefore referred to and then to allow this clause of the Constitution to be nullified under the guise of special taxation, would, in effect, be allowing the State of Louisiana to perpetuate a fraud against this respondent, and this, by its decisions, the State has refused to do.

A case decided by this court very much in point is that of *McGee vs. Mathews*, 71 U. S., 14 Wall 143, in which the court held that where swamp and overflowed lands were exempted from taxation as an inducement to parties to reclaim same, this exemption did not refer alone to state and county taxes, but to levee taxes as well, holding that any other construction would load the land with taxation and nullify the very purpose for which the exemption was granted.

In its decision of the case now under consideration, the Supreme Court of Louisiana passed on the construction of the statute in regard to what was **taxable property** and decided that this referred to the property in the Parish of Winn legally subject to taxation after the completion of the road, also properly holding that the question as to the taxability of property **in futuro** was necessarily left to the determination of the sovereign state. On this point, the decision followed the well settled jurisprudence of the State of Louisiana. See

Administrators of Tulane Educational Fund vs. Board of Assessors, 38 Ann. 292, where that court held:

"The character of taxability is not ineffaceably stamped on property and it may be removed by the act of its owner. Whenever he dedicates it to public use, it passes under the dominion of the exemption that is accorded to public property. Private property which is subject to taxation becomes exempt by the change that is made in its use. The Legislature cannot exempt from taxation property that is constitutionally liable to it, but an owner of property may translate it into the domain of constitutional exemption of it by dedicating it to public use."

Also see *Tulane University of Louisiana vs. Board of Assessors*, 115 La. Ann. Repts. p. 1026, in which the court held as exempt from taxation property granted said university, even though said property had not been formally transferred to the University, but was held by the executors of the succession of the grantor.

The property of the respondent railroad company came into existence under the exemption from taxation granted in the Constitution of 1898 and at no time has it been such taxable property within the Parish of Winn as that upon which the Plaintiff in Error has earned the aid voted by the tax payers of said parish. ,

Acting under the permission granted by the law and decisions in the State of Louisiana, the railroad took an easement for right of way purposes through Winn Parish, and the owners of the road translated this into the domain of constitutional exemption by building the track of the respondent through Winn Parish.

Since the tax was voted in favor of the Plaintiff in Error, schools and churches have been built and plots of ground laid off into burial grounds in said parish, and if the theory of vested right to tax all property in the parish were the law, as claimed by opposing counsel, for the reason as stated by said counsel that the ground on which they may be situate was, prior to their erection, subject to such tax, then the Plaintiff in Error could collect taxes from all religious, charitable and eleemosynary institutions erected in Winn Parish since said tax was voted. Such a theory that property once subject to taxation must always remain so, is opposed to all the tenets of law, not only in the State of Louisiana, but of other states of this Union.

In construing a statute of a state, the decisions of its court of last resort are binding upon the United States courts, and the holding of the Supreme Court of Louisiana construing its statute as to what is or should be considered taxable property is final and said holding will be adopted by this court.

It is submitted that the decision appealed from should be affirmed, if jurisdiction could be taken by this tribunal, but because of reasons heretofore given, this court has no jurisdiction to hear the cause and the Writ of Error should be dismissed.

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